

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BRENDAN DAILEY,

Defendant.

CR-14-77-GF-BMM

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on September 22, 2016. (Doc. 45.) Dailey filed objections on October 6, 2016. The Court reviews de novo findings and recommendations to which a party objects. 28 U.S.C. § 636(b)(1).

Judge Johnston conducted a revocation hearing on September 20, 2016. (Doc. 41.) Dailey admitted that he violated the conditions of his supervised release by using methamphetamine. (Doc. 45 at 1.) Judge Johnston found that Dailey's violations proved serious and warranted revocation of Dailey's supervised release. *Id.* Judge Johnston recommended that Dailey be placed in custody for four months,

followed by two months in Connections Corrections Treatment Center, followed by 32 months of supervised release. *Id.* at 4.

Dailey opposes Judge Johnston's Findings and Recommendations, arguing that the four-month custody recommendation contradicts the Court's March 2016 efforts to allow Dailey to participate in the Montana Eighth Judicial District Veterans' Treatment Court. (Doc. 46 at 3.) The Veterans' Court is an alternative to incarceration. *Id.*

Dailey argues that Judge Johnston chose four months custody because he recently had been informed that length of custody was a requirement for admission to the Connections Corrections Treatment Center in order to ensure that the participant is drug free. *Id.* at 2-3. Dailey argues that no research supports the idea that four months incarceration will increase the success of inpatient treatment. *Id.* at 3. He cites email commentary from Dr. David Mee-Lee, an expert on addiction medicine. (Exhibit 2, Doc. 46-2.) Dailey argues that Connections is a secure facility where he can be prevented from using methamphetamine during his treatment. (Doc. 46 at 3.)

Dailey requests that the Court reverse Judge Johnston's Findings and Recommendations. *Id.* at 4. He requests a sentence of time served, followed by 60 days at the Connections Corrections Treatment Center. *Id.* He requests to return thereafter to the Veterans' Court with 35 months of supervised release. *Id.*

The Court agrees with Judge Johnston's Findings and Recommendations. Dailey's violations of his conditions represent a serious breach of the Court's trust. Dailey has submitted four urine samples that tested positive for methamphetamine in a two-month period. Dailey has encountered difficulties in remaining substance free.

The Court entered into the Memorandum of Understanding with the Veterans' Court to promote an alternative to incarceration for those persons who presented potential for success outside the normal criminal justice system. Dailey has squandered that potential. The Court has refrained from acting before this point to allow Dailey the chance afforded by the Veterans' Court. Dailey's fourth violation forces the Court to act.

The Court also has reviewed the opinions of David Mee-Lee, M.D., as urged by the Veterans' Court. Dr. Mee-Lee points out that no determinant period of time will guarantee success in rehabilitation. Nothing in Dr. Mee-Lee's message persuades the Court that Dailey needs a change in the regimen recommended by Judge Johnston.

The Court believes that two months at the Connections Corrections Treatment Center will prove vital to Dailey's success on supervised release. The Court further agrees with Judge Johnston that four months of custody before entering Connections Corrections will be appropriate here to recognize Dailey's

repeated violations. A sentence of four months custody, followed by two months in Connections Corrections Treatment Center, and then followed by 32 months of supervised release represents a sufficient, but not greater than necessary, sentence.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 45) is ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendant John Brendan Dailey be sentenced to four months custody, followed by two months in Connections Corrections Treatment Center, and then followed by 32 months of supervised release. The conditions previously imposed shall be continued.

DATED this 18th day of October, 2016.



Brian Morris
United States District Court Judge